IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Megha Ram vs. The State of Rajasthan.

D.B.Cri. Appeal No.276/1987

Under Section 374 Cr.P.C. against the judgment dated 31.07.1987 passed by the Sessions Judge, Bikaner, in Sessions Case No.07/1987.

.....

Date of Judgment: 25th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.Vineet Jain for Mr. Sandeep Mehta for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal is filed by the appellant against his conviction as ordered by the court of Sessions Judge, Bikaner, in Sessions Case No.07/1987 dated 31.07.87.

The prosecution case was initiated on the basis of a report lodged by Fazlu Rehman at Police Station Chhatragarh on 19.06.86 to the effect that his house is close to the house of Ishar Ram Soni. He was not at his place on the fateful day. Cries were heard coming from his house. The elder son of Ishar Ram was getting out of the house. His elder brother Surtha Ram caught hold of him. It is stated that wife of Megha Ram , Sushila, was lying dead and blood was coming out from her wounds. In the meanwhile, Kanaihya Lal, Lal Singh, Lala Ram, Punu, Yaru Khan, Panch etc. arrived. At that time it is stated that Megha Ram made an extra judicial confession and on this, the first informant, along with Lal Singh, was sent to report to the police. FIR was registered. After that investigation was conducted. Charge sheet was filed and the case was made over to the trial court.

The trial court framed charges under section 302 IPC against the accused appellants. Accused denied the charges and claimed trial. At the trial 15 witnesses were examined. Accused was examined under section 313 Cr.P.C.

The accused said that the fateful day was the day of Nirjala Ekadshi. At about 10 PM he and his brother had gone to the

temple for hearing religious hymns being sung in the temple. There Lal Singh, Lalu Ram etc. were also present. He heard cries from his house. Then he and his brother Surtaram , Lali Ram, and Lal Singh rushed to the place . They saw that his mother and other family members were weeping. Sushila was lying in the courtyard near Kundi. Blood was coming out of her head. At that time, wife of his brother Surta Ram, Santosh and his brother Kanaihaya Lal informed him that the deceased had gone on the roof and from there she fell on the Kundi and sustained injuries. After hearing the cries Yaru Khan and Punnu Khan came on the scene of occurrence. Thereafter, the deceased was lifted from the ground and put on the cot where she was tried to be nursed. It was observed that she is already dead and while she was shifted to the cot, he got smeared with blood and he had not killed her.

After considering the case of the prosecution, the prosecution case was divided by the trial court in four segments. (1). Eye witnesses, (2) Witness who arrived on the scene of occurrence immediately after the incident, (3) Circumstantial piece of evidence and (4) Corroborative evidence.

While discussing the first two points, the trial court came

to the conclusion that the eye witnesses have not supported the prosecution case. So also, those persons who arrived immediately after the occurrence. Thus, the direct evidence what was sought to be produced by the prosecution, has not supported its case. Then the trial court has considered the circumstantial evidence. It has been observed by the trial court that the blood was found on the clothes and hands of the accused and it matched its group with the blood on the person of the deceased. The story of the defence that she was lifted from the court yard and shifted to the cot, was not believed by the trial court because there was no trail of blood on the floor from where she fell i.e., the place from where she was lifted and the place to which she was shifted.

The possibility of 'danda' being used was also found in favour of the prosecution because the 'danda' was available on the scene. The trial court also observed that there were injuries on the person of the deceased and Forensic Science Report corroborated the prosecution case and thus convicted the accused appellant under section 302 IPC and sentenced him to life imprisonment and a fine of Rs.200/- .

Assailing the findings of the trial court, the learned

counsel for the appellant stressed that when the direct evidence was not available, and the trail court was faced with only circumstantial piece of evidence, then what was required to be observed was that defence of the accused should have been carefully gone into by the trial court. The accused in his statement has categorically stated that his wife fell from the roof and sustained injury by a kund and then she was shifted to the cot. As and when a fall occurs from the roof , as stated by the accused, the injured victim is taken care immediately. The blood, though oozes out of the injuries, but the same is first consumed on the parts of the body and then by the cloth worn by the deceased. It is not that the blood always spills over or forms that part of such source which would create a trail from the place where she was lying and the place to which she was shifted. If the deceased was lifted soon after her fall, as the family members got alarmed, the absence of the trail is explained. Possibility of accused getting stains of blood on his person and clothes, in that eventuality, cannot be ruled out. This aspect is an explanation which can be considered to be a reasonable explanation. It cannot be branded as a frivolous explanation . Thus, presence of blood on the person of the accused is required to be excluded from consideration. It was natural to have stained the person of accused while he rescued his wife. Thus, there would remain hardly any evidence to complete

the chain to establish culpable offence against the accused. The presence of blood on his person have been clearly stated and explained in the statement under section 313 Cr.P.C. by accused and in that background, placing of reliance by the trial court on the prosecution case is wrong. It stands self condemned. The approach of the trial court , otherwise cannot be considered to be an approach , which can be said to be a justified approach . Therefore, the learned counsel for the accused appellants submits that the appeal deserves to be allowed and the accused deserves to be acquitted of the charges levelled against him.

The learned public prosecutor, per contra, submitted that the prosecution was handicapped because of the eye witnesses and the persons who arrived soon after, have been won over and in that background, the presence of blood on the accused, so also the presence of injuries on the person of deceased, were available to the trial court and in that view of the matter, the learned public prosecutor is of the opinion that the appeal of the accused deserves to be dismissed.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on

record.

The prosecution came with a case of direct evidence. The entire case of direct evidence was boom ranged. It has gone against the prosecution case. The eye witnesses and the witnesses who have said to have arrived soon after the occurrence, have not supported the prosecution. Then the trial court has been left with the circumstantial pieces of evidence. The most important circumstance is the blood on the person of the accused, which, from the explanation of the accused. It does not appear to be one which can be said to be an impossible proposition. If in the given situation, two inferences are permissible or possible, then the criminal jurisprudence tells us that the one favourable to the accused , should be given weightage.

In the instant case, the defence case is that deceased fell down from the roof. The prosecution has not attempted to explain that it was not possible for the deceased to fall from the roof. If the fall from the roof was possible, then the possibility of her falling from the roof, cannot be said to be a contingency, which has been wrongly brought on record by the defence. The statement of the accused, if it involves a possibility, then merely because the case

involves the death of the wife of the accused, it cannot be said that he is telling lies. The burden lay upon the defence to prove that it was not a possible sequence, which has been claimed by the accused. If the deceased was shifted and the accused cared for her, then the possibility of the blood being found on the clothes of the accused stands explained.

As regards the presence of 'danda' is concerned, nothing can be said because 'danda' is such an implement which would be available in all houses. The corroborative piece of evidence is useful only when principal evidence is produced against the accused. In the instant case, the principal case of the prosecution lacks credibility. Corroborative evidence looses significance.

Since the principle case is not made out, we feel that the conviction recorded by the trial court is not liable to be sustained, and in that view of the matter, we consider that the appeal of the accused deserves to be accepted. His conviction deserves to be set aside, so also the sentence.

In the result we are prepared to give benefit of doubt to the accused . His conviction and sentence are set side. He is on bail,

his bail bonds are cancelled. He need not surrender.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George